COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

ARLINGTON REDEVELOPMENT BOARD
DOCKET NO. 3801

* *
*
*
IN RE: *
*
61 DUDLEY STREET, *
ARLINGTON, MA *
*
*
* *

MEMORANDUM OF LAW IN SUPPORT OF THE APPLICATION OF SANTINI REALTY TRUST FOR THE ISSUANCE OF A SPECIAL PERMIT

I. INTRODUCTION

The applicant, Santini Realty Trust (hereinafter referred to as the "Applicant"), files this memorandum in support of its application for environmental design review and the issuance of a special permit, pursuant to the Arlington Zoning Bylaw (hereinafter referred to as the "Bylaw") and M.G.L. c.40A, §6 for relief from the various provisions contained in the Applicant's request for relief set out in its application filed in this matter.

The Applicant states that as a matter of fact and law, the Arlington Redevelopment Board (hereinafter referred to as the "Board") may issue the relief requested.

In this memorandum, the Applicant addresses the law as to the issue of whether the relief requested, an alteration or extension to a nonconforming use, constitutes a use that is not "substantially more detrimental to the neighborhood" and is, therefore, permissible.

II. PERTINENT FACTS

The Santini Realty Trust owns a single-family home at 61 Dudley Street, Arlington, MA (hereinafter referred to as the "Property").

The home on the Property was built in 1940 and predates the Bylaw. The home is located in the Industrial Zone and, with the exception of the right-side lot line, is conforming in all other dimensional aspects.

The Application respectfully suggests that the proposed use proposed by the Applicant, as a duplex, will not further impact the nonconformity on the right-side lot line.

The home on the Property is a small single-family dwelling. Various options were considered concerning a more viable use of the Property. Given the lot size, the best and highest use would be residential.

As the Board is aware, there is a critical need for additional housing in Arlington, including housing along routes serviced by public transportation. The duplex design proposed by the Applicant greatly improves the structure on the Property, what the Applicant suggests, does not create a nonconforming use that is substantially more detrimental to the neighborhood.

The Applicant requires relief under Article 6, Section 6.l.10F(1) and Article 8, Sections 8.1.1A, 8.1.2B and 8.1.3B. The Applicant also requires relief from Article 5, Section 5.6.2D)(2) and 5.6.2D(3). The Applicant, as detailed in Applicant's impact statement, also requires relief from Article 5.6.2D(5).

In support of the Application, the Applicant sets out in its impact statement the required Special Permit Findings under Section 3.3.3 of the Bylaw and the Environmental Design Review Criteria under Section 3.3.4 which the Board must make. The impact statement is incorporated

herein by reference and the Applicant does not restate the facts that support the grant of relief detailed in the impact statement.

III. APPLICABLE LAW

The Applicant seeks a special permit to alter and expand a single-family home located in the Industrial District. The Property and home constructed thereon predated the passage of the Bylaw and as such is a lawful prior nonconforming use.

The Board must first determine whether the use being made of the Property, here a residential use, which is not expressly authorized under the Bylaw, is nevertheless protected as a lawful nonconforming use. Since the existing one-family home on the Property was built in 1940 and predates the Bylaw, the answer to the first inquiry is yes.

Courts have held that nonconforming uses may be substantially extended where the statute, permitting board or Bylaw authorizes it. The Board must review the Applicant's request for relief to ascertain whether altering and/or modifying the one-family use to a duplex use does not constitute a use that is substantially more detrimental to the neighborhood. *Rockwood v. Snow Inn Corporation*, 409 Mass. 361 (1991). The Applicant suggests that the modification of the residential-to-residential use is not substantially more detrimental to the neighborhood.

Cochran v. Roemar, 287 Mass. 500, 502-508 (1934) is one of the first cases to hold that nonconforming uses may not only be continued but also increased in size. Further, the *Cochran* court stated in dicta that a use is not different in kind simply because it is greater in size.

The court in *Bridgewater v. Chuckran*, 351 Mass. 203 (1966) set out a three-prong test to determine whether an alteration, modification and/or extension is not substantially more detrimental to the neighborhood. That test is whether: (a) the use reflects the continued nonconforming use of the property when the Bylaw took effect; (b) there is a significant difference in quality or character

of the alteration proposed; and (c) the proposed use is different in kind in its effect on the neighborhood.

Here, the Property use, residential, is the same use of the Property proposed by the Applicant. Further, the Applicant suggests that the proposed alteration is not significantly different in quality or character than the existing use and the proposed use is not different in kind in its effect on the neighborhood.

The Applicant respectfully suggests that there is ample evidence for this Board to find that the proposed alteration and extension would not be substantially more detrimental to the neighborhood. Accordingly, the special permit should issue. The Board may also find that the proposed use satisfies the criteria set out in Sections 3.3.3 and 3.3.4.

The Applicant respectfully suggests that as a matter of fact and law, this Board may grant the relief requested.

SANTINI REALTY TRUST

By its attorney,

_____

Mary Winstanley O'Connor, Esq.
Krattenmaker O'Connor & Ingber P.C.
One McKinley Square, 5th Floor
Boston, MA 02109
(617) 523-1010
moconnor@koilaw.com
(BBO NO. 541708)

Dated: _____, 2024